



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 31 2012

REPLY TO THE ATTENTION OF:

WN-16J

Susan Sylvester, Director
Bureau of Watershed Management
Wisconsin Department of Natural Resources
Post Office Box 7921
Madison, Wisconsin 53707-7921

Re: Proposed Administrative Rules for Sewage Collection Systems

Dear Ms. Sylvester:

The U.S. Environmental Protection Agency has reviewed the proposed revisions to the Wisconsin Administrative Code relating to the operation and maintenance of sewage collection systems. In part, Wisconsin developed the proposed revisions in an effort to address one of the seventy-five issues EPA raised by letter dated July 18, 2011. The revisions, if adopted, may constitute a revision to Wisconsin's approved National Pollutant Discharge Elimination System (NPDES) program and would need to be submitted to the EPA for approval in accordance with 40 C.F.R. § 123.62. As discussed further below, EPA believes that three of the proposed provisions are not as stringent as the federal program. Additional comments and recommendations are provided in the enclosure to this letter.

NR 205.07(1)(u)

Federal regulations include conditions to be included in all NPDES permits. One of those standard conditions is the bypass provision at 40 C.F.R. § 122.41(m). Section 122.41(m) defines a "bypass" as an intentional diversion of waste streams from any portion of a treatment facility. The regulation prohibits bypasses except "[t]he permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation." 40 C.F.R. § 122.41(m)(2).

All other bypasses are prohibited, and the Director of the NPDES program may take enforcement action against a permittee, unless the permittee demonstrates that the bypass meets three very limiting conditions listed in 40 C.F.R. § 122.41(m)(4). Section 122.41(m)(4)(ii) of the bypass regulation provides that the permitting authority may "approve" - but not "authorize" - a bypass if the Director determines, after considering its adverse effects, that the bypass will meet the three conditions, including that there are "no feasible alternatives" to the bypass such as through reductions of inflow and infiltration into the collection system or building auxiliary treatment or storage facilities. See 40 C.F.R. § 122.41(m)(4)(i)(B).

Proposed NR 205.07(1)(u) would “authorize” bypasses in four circumstances:

- a. “Blending,” *see* NR 205.07(1), Paragraph 1;
- b. “Controlled diversions,” *see* Paragraph 2;
- c. “Other” bypasses, when the three limiting conditions at 40 C.F.R. § 122.41(m)(4) have been established, *see* Paragraph 3; and
- d. “Scheduled bypasses,” *see* Paragraph 4.

Proposed NR 205.07(1)(u) is inconsistent with the federal bypass regulation because it would “authorize” certain bypasses that would not be authorized under the federal bypass provision. To ensure that it is at least as stringent as the federal bypass provision, the language in proposed NR 205.07(1)(u) must be modified to only authorize a bypass which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. *See* 40 C.F.R. § 122.41(m)(2). NR 205.07(1)(u), Paragraph 2, pertaining to “Controlled Diversions,” is similar to, but broader than, the limited exception to the bypass prohibition specified in 40 C.F.R. § 122.41(m)(2). Specifically, although Paragraph 2(a), like the federal regulation, limits the exception to situations where effluent limitations are not exceeded, the additional condition in Paragraph 2(c) is broader than the remainder of the federal regulation, which limits the exception to instances where the bypass “is for essential maintenance to assure efficient operation.” For these reasons, proposed NR 205.07(1)(u) is inconsistent with, and is not as stringent as, 40 C.F.R. § 122.41(m).

NR 205.07(1)(u) may provide the criteria which Wisconsin will apply to evaluate when to exercise enforcement discretion; however, the criteria must be as stringent as the criteria listed under 40 C.F.R. § 122.41(m)(4)(ii) of the federal bypass provision.

NR 210.12

Proposed NR 210.12 would allow the State to authorize “blending” in a permit as long as the applicant meets numerous conditions. Proposed NR 210.03(2e) defines “blending” as “the routing of untreated or partially treated wastewater around a biological treatment process, or a portion of a biological treatment process, within a sewage treatment facility, which is then recombined with the biologically treated effluent and where the entire flow is subject to disinfection, if required by the WPDES permit, and the effluent is sampled prior to discharge.”

In general, the diversion of flows around biological treatment units constitutes a bypass, unless the diverted flow is routed to a treatment unit that is itself a secondary treatment unit. In this context, EPA considers treatment units that are designed and demonstrated to meet all of the effluent limits based on the secondary treatment regulations, 40 C.F.R. Part 133, to be secondary treatment units. Consequently, blending must be subject to a bypass provision that is at least as stringent as 40 C.F.R. § 122.41(m), unless the diversion is routed to a treatment unit that is itself a secondary treatment unit. Proposed NR 210.12, which would authorize “blending” (the diversion of flows around biological treatment units), is therefore inconsistent with, and is not at least as stringent as, 40 C.F.R. § 122.41(m), in that it would allow for permit authorization of bypassing.

NR 210.21(1)

Section 301(b)(1)(B) of the Clean Water Act (CWA) and 40 C.F.R. §122.44(a)(1) require that NPDES permits for discharges from Publicly Owned Treatment Works (POTW) contain effluent limitations based upon secondary treatment as defined by the Administrator. The Administrator has established effluent limitations based upon secondary treatment at 40 C.F.R. Part 133.

Sanitary sewers serving a municipal sewage treatment plant are considered to be part of the POTW. Consequently, secondary effluent limitations, as well as any additional effluent limitations necessary to meet water quality standards, must be included in NPDES permits for discharges from sanitary sewer systems, whether or not those discharges occur prior to the headworks of a POTW Treatment Plant. As an alternative to including secondary effluent limitations, some state NPDES permitting authorities have chosen to prohibit discharges from sanitary sewer systems.

Proposed NR 210.21(1) provides that, “[i]n accordance with s. NR 205.07(1)(u), sanitary sewer overflows and sewage treatment facility overflows are prohibited and may not be authorized in a permit issued by the department.” As previously noted, proposed NR 205.07(1)(u) is not as stringent as the federal bypass provision. In addition, it does not apply secondary and water quality limits to SSO discharges. To eliminate these problems with proposed NR 210.21(1), Wisconsin could either place secondary and water quality limitations on such overflow or prohibit overflows and delete the phrase “[i]n accordance with s. NR 205.07(1)(u),” so that the first sentence of NR 205.21(1) would read: “Sanitary sewer overflows and sewage treatment facility overflows are prohibited and may not be authorized in a permit issued by the department.”

Proposed NR 210.21(1) provides that, “the department shall consider such information when determining if a permittee has met the exceptions to the prohibitions established in s. NR 205.07(1)(u) 3. a. and b. . . .” The “exception to the prohibitions” provision in proposed NR 205.07(1)(u) is not as stringent as federal provisions for discharges from sanitary sewers. (It is inconsistent with the federal bypass requirement since the criteria listed in the federal bypass provision do not lead to an exception to the prohibition.) We suggest that this provision refer to whether the permittee has documented the facts supporting an application of enforcement discretion.

We hope that this letter will assist Wisconsin in establishing sewage collection systems operation and maintenance rules that are at least as stringent as the federal program. If you have any questions regarding this matter, please contact me or your staff may contact John Wiemhoff at (312) 353-8546 or at wiemhoff.john@epa.gov.

Sincerely,

A handwritten signature in dark ink, appearing to read "Tinka G. Hyde", written over a horizontal line.

Tinka G. Hyde
Director, Water Division

Enclosure

cc: Duane Schuettpeiz, WDNR

Enclosure

Additional Comments from USEPA regarding the State of Wisconsin's Proposed Administrative Rules for Sewage Collection Systems

1. Criteria for Application of Enforcement Discretion

EPA recommends that Wisconsin establish additional provisions related to enforcement discretion in its NPDES Enforcement Management System and not in its regulations.

2. Capacity Management, Operations and Maintenance (CMOM) provision (NR 210.23)

EPA is encouraged by the Capacity, Management, Operation and Maintenance (CMOM) provision in NR 210.23. By subjecting all permittees, including satellite sewage collection systems, to develop and implement CMOM programs, communities within the State of Wisconsin should be able to achieve a high level of sewage collection system performance. In January 2005, EPA developed guidance for successful CMOM programs; EPA's Guide for Evaluating CMOM Programs can be found at

http://www.epa.gov/npdes/pubs/cmom_guide_for_collection_systems.pdf. This guide provides useful information that Wisconsin can use in developing a comprehensive CMOM program. The following elements could further enhance the State of Wisconsin's proposed CMOM program:

- Customer Service – Proper communication is essential to determine the scope of complaints and concerns of sewage collection system customers. Wisconsin should consider requiring a standard operating procedure to be developed in CMOM programs for customer service and a system for tracking customer complaints, so that permittees can improve the efficiency of managing complaints and identify recurring problems. For additional information, please see Section III.C. of Chapter 3 in the CMOM guidance.
- Budgeting – Analyzing a sewer collection system financial information is an important component of any CMOM program. Knowing the amount of funds available for sewer collection system maintenance would have a direct effect on planning any future maintenance plan, especially preventive maintenance. For additional information, please see Section IV.A. and Section V.A. of Chapter 3 in the CMOM guidance.
- Water Quality Monitoring – While not applicable to every community, guidance for implementing a water quality monitoring program can be helpful for communities. For additional information, please see Section IV.C. of Chapter 3 in the CMOM guidance.
- Training Program – The current proposed CMOM program specifies “appropriate training” as a component. Wisconsin should further define expectations for appropriate training. Training should include, at a minimum, a safety component for sewage collection system employees. For additional information, please see Section III.B. and IV.E. of Chapter 3 in the CMOM guidance.

- Preventive Maintenance – Preventative maintenance scheduling is an important part of any CMOM Program. Section 4.d. in the CMOM provision in the State of Wisconsin's proposed administrative rules (or guidance issued subsequent to rule adoption) can be expanded with more detail, including a description of each type of potential preventive maintenance activity. Each CMOM program should formalize a specific frequency and schedule for each preventive maintenance activity. At a minimum, Wisconsin should consider changing Section 4.d.4 to the following (added words underlined): "A description and a frequency schedule of routine preventive operation and maintenance activities such as inspections, televising, cleaning, flow monitoring, root removal, and rehabilitation." For additional information, please see Section IV.L.1., Section V, and Section VII of Chapter 3 in EPA's CMOM guidance.

3. Basement Backup Reporting

The frequency of basement backups indicates the performance of a sewage collection system. Regular reporting (more than annual) to the Wisconsin Department of Natural Resources ensures effective tracking and enables a timely response by the wastewater treatment facility. Indiana and Illinois require reporting basement backups. Reporting should include event-specific information such as, at a minimum, the information included in Wisconsin's current sanitary sewer overflow reporting procedure and indicate whether the backup was the responsibility of the municipality or the private resident. EPA suggests revisions to Section 4 of the CMOM provision and NR 210.21 Section 4 to include the above referenced basement backup reporting after each event (not strictly annual in conjunction with CMAR reporting) whether in conjunction with an SSO occurring within the proximate area of the basement backup occurrence or in the absence of an SSO occurring in the proximate area of the basement backup. EPA recommends this reporting timeframe to be consistent with the current SSO reporting requirements in Wisconsin.

4. NR 110.05(3)(c) 2. a.

Wisconsin should revise this provision or add a note to clarify that the compliance determination contemplated therein applies only for the purpose of deciding whether the State will approve a sewer extension.

5. Controlled Diversions (NR 210.13)

EPA is not able to comment on NR 210.13(2) at this time since "final effluent filters" is not defined. A clarification of the intent and meaning of this provision may impact whether such controlled diversions would be at least as stringent as the federal program.